

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT
3 NORTHERN DIVISION
4

5 UNITED STATES OF AMERICA,)
6)
7 Plaintiff,)
8) No. 3:04-cr-179
9 vs.) Knoxville, Tennessee
10) March 28, 2008
11 GREGORY ALEC PHILLIPS,) 2:00 p.m.
12)
13 Defendant.)

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15
16 TRANSCRIPT OF REVOCATION HEARING
17 BEFORE THE HONORABLE THOMAS W. PHILLIPS
18 UNITED STATES DISTRICT JUDGE
19

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(Note: Unless provided to the court reporter, all
all names are spelled to the best phonetic
approximation.)

1 This cause came on for hearing on the 28th
2 day of March, 2008, in the United States District Court
3 for the Eastern District of Tennessee, Northern
4 Division, before the Honorable Thomas W. Phillips,
5 presiding.

6 The Court having been duly opened, the
7 following proceedings were had, to-wit:

8 THE COURTROOM DEPUTY: All rise. United
9 States District Court for the Eastern District of
10 Tennessee is now open pursuant to adjournment with the
11 Honorable Thomas W. Phillips, preceding.

12 Please, come to order and be seated.

13 THE COURT: Well, good afternoon, ladies and
14 gentlemen.

15 Madam Clerk, if you will call the next case
16 for us, please.

17 THE COURTROOM DEPUTY: This is a Revocation
18 Hearing in case 3:04-cr-179, United States of America
19 versus Gregory Alec Phillips.

20 Here on behalf of the Government is Charles
21 Atchley.

22 Is the Government ready to proceed?

23 MR. ATCHLEY: Present and ready, Your Honor.

24 THE COURTROOM DEPUTY: Here on behalf of the
25 defendant is Hallie McFadden.

1 Is the defendant ready to proceed?

2 MS. McFADDEN: Yes, Your Honor.

3 THE COURT: Okay. Mr. Phillips, this is a
4 Revocation Hearing that's being held pursuant to Rule
5 32.1 of the Federal Rules of Criminal Procedure.

6 If you would please raise your right hand for
7 me.

8 THE COURTROOM DEPUTY: Do you solemnly swear
9 or affirm that you will truthfully answer all questions
10 asked of you at this time and you shall answer under
11 God. If so, please say I do.

12 THE DEFENDANT: I do.

13 THE COURTROOM DEPUTY: Thank you. And you
14 may be seated.

15 THE COURT: Mr. Phillips, will you please
16 state and spell for the record your full name.

17 THE DEFENDANT: Yes, sir. My name is Gregory
18 Alec Phillips. It's G-r-e-g-o-r-y, A-l-e-c,
19 P-h-i-l-l-i-p-s.

20 THE COURT: And how old are you,
21 Mr. Phillips?

22 THE DEFENDANT: I'm 39 years old.

23 THE COURT: How far did you go in school?

24 THE DEFENDANT: I completed a Bachelor's
25 Degree and some post graduate work.

1 THE COURT: So I take you it you have no
2 difficulty reading or writing, is that correct?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now, Mr. Phillips, on
5 September 28th, 2005, you appeared with your counsel in
6 court and you were sentenced to 37 months' imprisonment
7 followed by a life-time term of supervised release.

8 A Petition for Revocation of Supervised
9 Release has been filed in your case. The alleged
10 violations include having third-party contact with the
11 victim, associating with a felon, associating with
12 known sex offenders and/or individuals known to engage
13 in criminal sexual activity with children under 18
14 years of age, failing to disclose third-party risk as
15 instructed, failing to be truthful in sex offender
16 treatment, failing to be truthful with a probation
17 officer, failing to follow the instructions of your
18 probation officer and falsifying monthly report forms.

19 Now, Mr. Phillips, you're going to be
20 represented in this case by Miss Hallie McFadden, is
21 that correct?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And, Miss McFadden, I take it
24 that you are willing to represent Mr. Phillips for his
25 Revocation Hearing?

1 MS. McFADDEN: Yes, I am, Your Honor.

2 THE COURT: Okay. Thank you, Miss McFadden.

3 Now, Miss McFadden, what is the defense
4 position in regard to the Petition for Revocation?

5 MS. McFADDEN: Your Honor, we actually do not
6 concede the violations. We believe that there may be
7 -- may be -- one or two technical violations; however,
8 we believe the rest of the allegations are not
9 violations of his probation of the supervised release.

10 THE COURT: Well, thank you, Miss McFadden.

11 And, Mr. Atchley, are you ready to proceed
12 with your proof?

13 MR. ATCHLEY: Yes, sir, I am.

14 THE COURT: Let's have all the witnesses that
15 are going to testify please stand at this time and be
16 sworn.

17 THE COURTROOM DEPUTY: Do you solemnly swear
18 or affirm that the testimony you will give in the
19 matter before the Court today will be the truth, the
20 whole truth and nothing but the truth, so help you God?
21 If so, please say I do.

22 (Prospective witnesses were
23 administered the oath.)

24 MR. ATCHLEY: Your Honor, actually the United
25 States is going to proceed just with Mr. Chavers. I
26 out of an abundance of caution had the others sworn

1 just in case but don't anticipate using them.

2 THE COURT: Would you like to have them
3 excluded under the exclusionary rule, Miss McFadden?

4 MS. McFADDEN: Yes, Your Honor, please.

5 THE COURT: Okay. Please, remain outside of
6 the courtroom until you are called to testify.

7 And, of course, you are required not to
8 discuss your testimony with anyone or allow anyone to
9 discuss it with you until you have completed your
10 testimony in this case.

11 Okay. Mr. Atchley, you may proceed.

12 MR. ATCHLEY: Thank you, Your Honor.

13 The United States calls Probation Officer
14 Chavers.

15 THE COURT: Okay. Mr. Chavers.

16 TIM CHAVERS,
17 having been called as a witness herein,
18 having been previously duly sworn, was
19 examined and testified as follows:

20 THE COURT: You may proceed when you are
21 ready, Mr. Atchley.

22 MR. ATCHLEY: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. ATCHLEY:

25 Q Mr. Chavers, would you state your name for the

1 record, please.

2 A My name is Tim Chavers.

3 Q And where are you employed, sir?

4 A I'm employed with the United States Probation
5 Office, Chattanooga, Tennessee.

6 Q And how long have you been employed there?

7 A I've been a Federal Probation Officer since 1995.

8 Q All right. So I take it you're a federal
9 probation officer. Could you very briefly tell us what
10 that job entails and what some of your duties are.

11 A My job is to supervise people who come out to
12 supervision that were sentenced to a term of supervised
13 release and/or probation by the Courts.

14 When the Court imposes conditions on individuals,
15 my job is to ensure that they comply with those
16 conditions and notify the Court if they don't.

17 Q Okay. And do you have a specialty with regard to
18 this supervision? Are there types of offenders that
19 you specialize in?

20 A Yes, I do. Since 2002 I have been -- I've been
21 the Mental Health Specialist in Chattanooga since 2002.
22 I supervise all the sex offenders assigned to the
23 Chattanooga office and the most severe mental health
24 cases.

25 Q Okay. And during the course of your duties as a

1 probation officer here in the Eastern District of
2 Tennessee has Mr. Gregory Alec Phillips been a
3 probationer or supervised releasee on your caseload?

4 A Yes, he has.

5 Q And do you see him here in the courtroom today?

6 A Yes, I do.

7 Q The gentleman sitting over here at counsel table?

8 A That's correct.

9 Q And when did you have an opportunity to begin
10 supervising Mr. Phillips?

11 A He was released from the Bureau of Prisons'
12 custody on August 15th. He reported to my office
13 August 16th, 2007, for his initial office meeting.

14 Q Okay. And very briefly could you tell us what
15 took place in that initial meeting.

16 A When someone comes in to see their probation
17 officer for the first time, we go over the conditions
18 of the supervision that are imposed by the Court. We
19 read those conditions to the individual.

20 We will explain them -- ask them if they have any
21 questions about any of those. We will explain any
22 conditions we feel like need to be explained.

23 Q Okay. Did you fully explain all the conditions of
24 his supervised release to him?

25 A Most people when they come in the first time for

1 their initial office visit -- it takes us anywhere from
2 30 minutes to an hour to go over their conditions.

3 Mr. Phillips was in my office for well over two
4 hours. We had a very long discussion that day about
5 his conditions because of the nature of his conviction
6 and because of the numerous conditions that he has.

7 Q Okay. And did he appear to understand what the
8 conditions of his supervised release were?

9 A There were -- There was one condition in
10 particular that he asked a lot of questions about. It
11 was third-party risk. And he wanted to know exactly
12 what he needed to disclose with regard to that
13 condition because he commented that if he disclosed his
14 offense to people that he was trying to get a job with,
15 they may not want to hire him.

16 I advised him that that was part of the
17 consequence of his conviction. And I made it very
18 clear to him that he was to disclose to anyone with
19 whom he rented an apartment, with anyone for whom he
20 worked or anyone that he dated that he was a convicted
21 sex offender -- convicted registered sex offender. He
22 was to tell them exactly what he was on supervision
23 for. And I told him he should read it verbatim from
24 his J & C, which is the Judgment Commitment Order.

25 Q Did he acknowledge that he understood all the

1 conditions?

2 A He did.

3 Q And he acknowledged that in writing?

4 A He signed the conditions, indicating that he
5 understood them and that he would comply.

6 MR. ATCHLEY: Okay. Your Honor, at this time
7 may I approach the witness, please?

8 THE COURT: You may.

9 BY MR. ATCHLEY:

10 Q If you could, please, Mr. Chavers, could you
11 identify for the Court the document that I've given you
12 there.

13 A This is a copy of his Judgment and Commitment
14 Order.

15 And when people come in who are subject to a term
16 of supervised release, we give them a copy of their
17 Judgment Commitment Order. And we read to them
18 ourselves the conditions of supervision -- the special
19 conditions of supervision, and then we have them sign
20 and acknowledge it.

21 Q Okay. And did Mr. Phillips do that?

22 A He did.

23 Q And is that acknowledged on that document I gave
24 you?

25 A It is.

1 MR. ATCHLEY: Okay. At this time, Your
2 Honor, I would move it into evidence as Government's
3 Exhibit No. 1.

4 THE COURT: It will be received.

5 (Government's Exhibit No. 1 was admitted.)

6 MR. ATCHLEY: Thank you, Your Honor.

7 BY MR. ATCHLEY:

8 Q Now, I believe you testified, Mr. Chavers, that
9 you began supervision September 16th, I believe?

10 A August 16th, 2007.

11 Q August 16th, 2007.

12 If you could please tell us exactly, briefly, what
13 this supervision entailed. How often would you begin
14 to see Mr. Phillips and what are some of the things you
15 did in the supervision?

16 A Well, during our first meeting I made clear to him
17 that he was considered a high-profile, high-risk case
18 to us simply because he was a two-time convicted child
19 predator.

20 I also let him know that he was expected to fully
21 comply with the conditions and that if he had any
22 questions whatsoever about those conditions, he should
23 contact me and ask me.

24 I made it very clear to him that day that
25 truthfulness was essential for him and that he was to

1 be honest. He indicated he understood.

2 On August 17th I went by his -- the place where he
3 was living. It was the In-Town Suites in Chattanooga.
4 I went to verify that he had disclosed third-party risk
5 to the manager there.

6 When I spoke to the manager, she indicated that
7 she remembered Mr. Phillips, but he did not tell her
8 that he was a sex offender. She was shocked by that.

9 I disclosed to her what he was on supervision for.
10 I disclosed to her what the offense involved, the
11 basics of the offense, and asked her to call me if she
12 had any questions.

13 I then went to talk to Mr. Phillips about it. He
14 was not there. I did find him at the residence on
15 August 20th. And when I went to see him that time, his
16 father was there when I first got there. We chatted
17 for a few minutes. His father then left.

18 And I let Mr. Phillips know that when I talked to
19 the apartment manager of the In-Town Suites, she did
20 not know that he was a sex offender. I let him know
21 that I disclosed that to her and asked her to call me
22 if there were any problems.

23 I also made it very clear to him that day that he
24 should take third-party risk disclosures seriously and
25 that if he didn't, then there would be consequences for

1 that because of the nature of his case.

2 Q Okay. Did he appear to understand that
3 completely?

4 A He did. I also let him know that I was not going
5 to be charging that as a violation since he had checked
6 into the facility before I went over the conditions,
7 but I warned him that if that type of thing happened
8 again, then he would be charged with a violation.

9 Q Okay. Now, how often would you get to see
10 Mr. Phillips when he was under your supervision, and
11 how often would he come into the office, and what are
12 some of the procedures behind that supervision?

13 A I didn't give any set time to come see me. I did
14 put him -- He had a condition that he submit to drug
15 screens -- random drug screens. So I put him in our
16 code-a-phone system, and he was required -- At a
17 minimum he was going to have to report to the office
18 monthly. We had multiple telephone contacts. Most of
19 our contacts early on were telephone.

20 I went by the residence on the 20th. And then he
21 would call me to keep me informed about what he had
22 done as far as compliance with the TBI Sex Offender
23 Registry and his pursuit of a job.

24 I would call him from time to time just to check
25 on his progress and how he was doing.

1 Q Okay. Did supervision with Mr. Phillips go okay
2 through August?

3 A It appeared to me like it was going well.

4 Q September?

5 A Excellent.

6 Q October?

7 A Excellent.

8 Q When did you begin to have some problems -- some
9 compliance problems with Mr. Phillips?

10 A The first time I had any real suspicions about
11 whether something was not right was on December 11th,
12 2007.

13 He had obtained employment at a law firm in
14 Chattanooga as a paralegal. And my supervisor and
15 myself went by to do an unannounced employment visit.

16 Q Surprise visit?

17 A Surprise visit.

18 When we got there, we asked him to show us where
19 his office was. He had a computer in there. And we
20 asked him if he would -- if he used that computer for
21 any personal business.

22 He admitted that he used it to e-mail friends and
23 family. We asked him who he would e-mail, and he told
24 us it was his father, friends, family, that kind of
25 thing. He did disclose that he had contact -- e-mail

1 contact with a friend of his in Thailand.

2 Q Is this the first time you ever heard of this?

3 A Yes.

4 Q What did he say about this friend in Thailand?

5 A Well, needless to say, since he had committed his
6 offense in Thailand when myself and my supervisor heard
7 him say he was communicating with somebody in Thailand,
8 that perked up our attention a little bit.

9 We asked him -- My first thought was is this his
10 victim. And I asked him, "Have you had any contact
11 with your victim?" He adamantly denied that, direct or
12 indirect.

13 I also asked him if his friend was a felon, and
14 he said not to his knowledge. He was not a felon. He
15 described his friend as a British national who was
16 approximately 42 years old, who was an upstanding,
17 law-abiding citizen, and that to his knowledge he was
18 not anyone who had any criminal past or --

19 We even asked him if he was a sex offender,
20 whether or not he was someone who engaged in sexual
21 activity with children under 18. And he said not to
22 his knowledge.

23 We pressed him on that and said, "You're saying
24 not your knowledge." And he said, "No". When -- We
25 spent quite a bit of time with him talking about this.

1 Q What is quite a bit of time?

2 A We were at his office I would say close to an
3 hour -- 45 minutes to an hour.

4 And we wanted it to be very clear to him that we
5 were concerned about this friend in Thailand. We asked
6 him repeatedly if he knew whether or not he was a
7 felon, whether or not he was a sex offender, whether or
8 not he had contact with his victim. He maintained,
9 "No".

10 We pressed him enough that he got pretty agitated.
11 He started defending himself, telling me how he had
12 done everything he was supposed to do. He had been to
13 all his drug screens. He had gone to treatment like he
14 was supposed to, he found a place to work, he found an
15 apartment and that he was trying to comply with his
16 conditions.

17 So much so that I wanted him to know as far as I
18 knew there was nothing that he had done that was a
19 violation of his supervision. And I stressed to him
20 that if he's telling me the truth about his friend in
21 Thailand, then that's fine.

22 We didn't tell him to break that relationship off
23 with his friend. We made it very clear to him that we
24 had concerns about that.

25 He even -- When he became agitated and talked

1 about how well he had done, I commended him. I said,
2 "You have done well. And if you're telling me the
3 truth about all this, that's fine."

4 I was letting him know he had shown up as he
5 should for all his appointments, so on, so forth.

6 Q Did he ask you to do something as a result of that
7 meeting?

8 A He did. He asked me if I would put that in
9 writing. And I said, "I'd be happy to put that in
10 writing, Greg," I said, "but you need to understand
11 something. It's only good up to the point I sign. If
12 I find out later that you've lied to me, it doesn't
13 mean a thing." He said he understood.

14 Q Okay. What happened as December went on?
15 Anything else come up with regard to Mr. Phillips?

16 A On December 19th I got a phone call from --
17 Let me backtrack just a second. I want to make
18 one thing clear. This issue with him having contact
19 with a felon -- We asked him that repeatedly on
20 December 11th, if he had had contact with anybody he
21 knew to be a felon.

22 Q Not just Mr. Phillips?

23 A Not just -- We didn't even know the guy's name at
24 that point. I didn't ask him his name at that point.

25 We asked him if he had contact with anybody he

1 knew to be a felon or sex offender or someone engaged
2 in criminal activity or someone engaged in sex with
3 little children, children under 18. We stressed that
4 point. And he said, "No".

5 On December 19th --

6 Let me add one more thing. He even commented that
7 the only people that he had had contact with who he
8 knew to be felons, sex offenders or people who liked
9 children since his release were the individuals that
10 were in his treatment program with Dr. Bertin Glennon
11 at the Center for Individual Family Effectiveness.

12 Q In other words, individuals that he was authorized
13 to be around?

14 A Exactly.

15 On December 19th I received a phone call from FBI
16 Agent Wayne Jackson in Chattanooga. He told me that he
17 had just gotten off the phone with an attorney who said
18 that Mr. Phillips had contacted him about providing
19 information on a Top Ten FBI fugitive who had been out
20 of the country for years that they were looking for.

21 I advised Mr. Jackson that that was news to me
22 because we had seen Mr. Phillips just about a week
23 before that and that he had adamantly denied any
24 contact with anybody he knew to be a felon.

25 Q Did he mention this fugitive to you in that

1 meeting at all?

2 A He did. He told me the name of the fugitive was
3 Jon Schillaci.

4 Q Had Mr. Phillips ever mentioned this to you before
5 you heard it from Agent Jackson --

6 A He had not.

7 Q -- in any prior meeting, put it on any monthly
8 report --

9 A He did not.

10 Q -- in any way at all communicate it to you?

11 A It was a great surprise to me on December 19th.

12 Q Okay. So please go on. What happened in this
13 meeting?

14 A During that meeting I let the FBI agent know
15 that -- Well, he told me that through the attorney he
16 had been told that Mr. Phillips wanted to provide
17 information on the whereabouts of this fugitive who was
18 living in Mexico and that he would be willing to do
19 that conditionally.

20 And according to the FBI agent Mr. Phillips wanted
21 the reward money and he wanted -- and what Mr. Jackson
22 told me was he wanted off supervision.

23 I let Mr. Jackson know that I didn't think the
24 Court would allow that, I didn't think that the U.S.
25 Attorney would allow that, but that obviously in that

1 situation if Mr. Phillips wanted to cooperate with the
2 Government, he would have to get permission from the
3 Court before he could do that.

4 And I told Mr. Jackson that I was quite sure that
5 Mr. Phillips knew that because he goes out of his way
6 to show that he understands his conditions and that
7 he's complying with them.

8 I offered to the FBI agent that day to call
9 Mr. Phillips to the office immediately and confront him
10 with that information. I told the FBI agent, "If you
11 want me to, I will call him down here. We can confront
12 him with this, and I will give him instructions to
13 disclose that information to you. And if he doesn't do
14 it, I will ask the Court to revoke him."

15 Because for someone to claim that he has
16 information on an FBI top ten fugitive, who is living
17 out of the country, and not disclose that
18 unconditionally clearly is going to be a problem for
19 someone on supervised release.

20 Q It creates problems with your ability to supervise
21 him --

22 A Exactly. Well, at that point we had asked him
23 about eight days prior if he had contact with anybody
24 he knew to be a felon, and he adamantly maintained that
25 he had not.

1 So as soon as he told me this information I
2 realized that he had committed violations of his
3 supervision.

4 Mr. Jackson -- He indicated that he requested that
5 I not pursue that at that point, and I told him I would
6 agree to that. I did let him know that I already knew
7 that Mr. Phillips would be coming to the office the
8 next morning to give a random drug screen.

9 I told the FBI agent about mine and my
10 supervisor's conversation with him at his place of
11 employment and that he had adamantly denied to us that
12 he knew that he had any contact with a felon.

13 And I let the FBI agent know that when he came in
14 the next morning, I was going to revisit that issue
15 with him.

16 Q Did you, in fact, do that?

17 A I did.

18 Q Okay. So Mr. Phillips came in for a random drug
19 screen the next day?

20 A He did.

21 Q Did you have an opportunity to address this with
22 him?

23 A I did.

24 Q What happened?

25 A I had him come into the office. I told him I

1 wanted to revisit this issue with his friend in
2 Thailand and I had concerns about that. And I asked
3 him -- At this point I asked him who the friend was,
4 what his name was.

5 He was taken aback by that request. I remember he
6 looked at me and said, "You want to know his name?" I
7 said, "Yes, I want to know his name." He said his name
8 was Leo Phillips.

9 I asked him again if he knew whether or not Leo
10 Phillips was a felon or a sex offender or anybody who
11 engaged in criminal activity with children under 18.
12 He said, "No."

13 I do need to add one thing. When we spoke to him
14 on the 11th, we instructed Mr. Phillips to ask this
15 friend of his if he was a convicted felon.

16 When he came in on the 20th, I asked Mr. Phillips
17 if he had received notice from his friend as to whether
18 or not he was a convicted felon. He told me, no, that
19 he had not e-mailed him since then.

20 I then gave him instruction to e-mail his friend
21 and ask him whether or not he was a convicted felon.

22 Now, when he came in on the 20th, what he didn't
23 know was that I had spoken to the FBI the day before.
24 I took out his conditions of supervision. I read to
25 him condition number 3, that it is a requirement of his

1 conditions that he speak truthfully with me.

2 I advised him of U.S.C. 18, 1001, that it is a
3 violation of federal law to lie to a federal law
4 enforcement officer during the commission of their
5 duties.

6 Q Did he appear to understand all that?

7 A He said he understood. I asked him again, "Since
8 your release have you had any contact with anybody that
9 you know to be a felon?" He adamantly denied that he
10 had.

11 I had previously told one of my colleagues, who is
12 in the office next to me, that I really did think that
13 when I pressed him on that issue he would probably tell
14 me that he had had contact with this fugitive. This
15 colleague is U.S. Probation Officer Joey Byars.

16 I had also told Mr. Byars that, "If he adamantly
17 denies this, I'm going to ask you to come and sit in
18 there."

19 So I went and got Mr. Byars. I advised him of why
20 we were there, that I was -- that Mr. Phillips was
21 denying having any contact with anybody he knew to be a
22 felon, a sex offender, anybody that engages in sexual
23 activity with children under 18.

24 I asked him again in the presence of Mr. Byars,
25 "Have you had any contact with anybody that you know to

1 be a felon, a sex offender, anybody who engages in
2 criminal activity with anybody under 18 since your
3 release?" He said, "No".

4 Q Okay. And he in no way mentioned Mr. Schillaci at
5 all?

6 A He did not. We also asked him about contact with
7 his victim in any manner, in any means, third party,
8 direct, indirect. He denied it. He indicated he
9 thought about it, but he denied it. So I let him go.
10 I let him go on his way.

11 He was there in the office for a long period that
12 day also. He came in for the screen approximately
13 7:45, and he didn't leave my office until after he was
14 supposed to be at work. And I know he was there for a
15 long time.

16 And we discussed this issue at length, because I
17 called his supervisor at his place of employment to let
18 him know that he had just left my office and that was
19 why he was going to be late for work.

20 Q All right. Well, when is the next time that you
21 had dealings with Mr. Phillips on these issues?

22 A On -- He came in on December 20th. The next time
23 I spoke to him about these issues was on January 9th.
24 I mailed him a letter telling him that he needed to
25 come to the office to discuss violations of

1 supervision.

2 Well, we had phone conversations in between then.
3 When he was in the office on the 20th, I had told him
4 that he needed to disclose his polygraph risk list.

5 Every sex offender that we supervise is required
6 to keep a list of any known violations, possible
7 violations, or risky or questionable behavior. And
8 they are to do that so that when they go to their
9 polygraphs, they can disclose this information.

10 When he came in on the 20th, I told him to submit
11 that list to me. He said that he would. He did submit
12 the list. He also submitted a letter that came -- that
13 was dated on the 23rd of December in which he offered
14 to have no more contact with his friend, Leo Phillips,
15 in Thailand.

16 And he indicated that he was offering this to
17 prove himself trustworthy to me and that he understood
18 that he needed to conduct himself above reproach.

19 On January 9th I sent him a letter telling him to
20 come to the office. I had reviewed -- I had received
21 his --

22 Wait. Let me correct something. On January
23 4th myself and U.S. Probation Officer Doug Corn went to
24 the residence that he lived at, River Hills Apartments
25 in Chattanooga. And the purpose of that was to verify

1 third-party disclosure.

2 Q Okay. When you say you're going there to confirm
3 that he has identified what he's obligated to identify,
4 what he was convicted of, the fact that he's a
5 registered sex offender and the conditions of his
6 conviction --

7 A That's correct.

8 Q -- to anyone that he rents from or works with --

9 A That's correct.

10 Q -- or whatnot.

11 Okay. Did you speak to his landlord?

12 A When we arrived there, the general manager of the
13 complex -- We asked for Constance Smith, which is the
14 individual he said he had spoke to. She said that she
15 was no longer the assistant manager there but she still
16 lived at the complex.

17 I advised her of why we were there, to confirm
18 that Mr. Phillips had properly disclosed third-party
19 risk, that he was a convicted registered sex offender
20 and that he had advised her of that.

21 The general manager of the complex looked shocked,
22 and she said that Miss Smith had not told her that.
23 She said Miss Smith still lived at the complex, that
24 she would get in touch with Miss Smith and ask her if
25 she could meet with us.

1 A short time later we received a phone call from
2 Miss Smith. She said that she was still living at the
3 complex, that she vividly remembered Mr. Phillips and
4 that she would be happy to talk to us.

5 So she came down and talked to myself and U.S.
6 Probation Officer Doug Corn. I asked her if he
7 disclosed that he was a convicted registered sex
8 offender and that he was on supervision for engaging in
9 illicit sexual conduct with minors in foreign places.

10 She looked like a deer caught in the headlights.
11 She said he never told her any of that. She said that
12 he told her that he was on probation for having sex
13 with an underage prostitute in Thailand.

14 I asked her again, "Did he ever say to you that he
15 was on supervised release, probation, for engaging in
16 illicit conduct with a minor in foreign places?" She
17 said, "No. I specifically asked him what he was on
18 probation for, and he said it was for having underage
19 sex with a female prostitute in Thailand." She made it
20 very clear that he did not disclose that to her.

21 She teared up at one point. She said that his
22 demeanor and the way he carried himself disarmed her.
23 He had led her to believe that he was relocating from
24 North Carolina and that this offense that he had
25 committed that he was on probation for -- she said that

1 he made her think that it was not a serious offense and
2 that he thought that this individual was over 18.

3 We disclosed to her what he was on supervision for
4 and the fact that it was a boy who was between the ages
5 of 13 and 16. And she was just dumbfounded.

6 On January 9th I sent a letter to Mr. Phillips
7 telling him to report to the office to discuss
8 probation violations.

9 He called me shortly thereafter after he received
10 the letter, wanted to know if he could come talk about
11 it immediately. I told him, "No". I told him I would
12 not discuss this matter with him until the 28th. I
13 told him that I had information I considered to be
14 valid, which indicated he had clearly violated his
15 conditions.

16 I told him that I had reviewed his polygraph risk
17 list and that in my opinion based on the information I
18 had it was incomplete and that he needed to revise that
19 list. I told him he needed to submit that by the close
20 of business on January 18th. He said he would comply.

21 Q Okay. Did he, in fact, do that?

22 A He did.

23 Q Okay. What was your purpose of putting off the
24 meeting with him until the 28th?

25 A Well, at that point it was nothing more than me

1 trying to gather all the facts I had and put them in
2 order and to give him time to update his list.

3 That first list that he submitted to me didn't
4 indicate anything about having any contact with the
5 fugitive.

6 Q Did that show up in the second list?

7 A It did.

8 Q Okay. Can you please tell us what were some
9 things that showed up in the second disclosure list
10 that were not contained in the first disclosure list.

11 A He had numerous -- The biggie was the contact with
12 the fugitive. And I don't have a copy of that list
13 with me, but he disclosed that he had had contact with
14 somebody by the end of September that he learned was --

15 Q September 2007?

16 A By the end of September 2007. He had had
17 contact -- e-mail contact with someone that he knew to
18 be a fugitive and that he was going to contact somebody
19 to see how to get that information to the Government.

20 Q Okay. Now, the first --

21 He indicated in his own disclosure list that he
22 had had contact with this person sometime around the
23 end of September 2007?

24 A Yes, that's --

25 Q When is the first time that he informed you that

1 he had had contact with this man?

2 A The first time we discussed contact with that
3 individual was on January 28th when he came to discuss
4 his probation violations.

5 Q Okay. Now, had he ever alluded to it before then,
6 sent you a letter talking about meeting with the FBI or
7 anything like that?

8 A He did. He had sent me a letter, and it arrived
9 at the probation office on December 26. I was out of
10 the office for the holidays. I got it back when I came
11 back on the 2nd of January.

12 And he indicated that he had actually met with the
13 FBI agent on the 21st of December about an ongoing
14 investigation. He didn't indicate in the letter what
15 it was about.

16 Q But did you later learn that this was regarding
17 his contact with Mr. Schillaci?

18 A I knew that already because of my contact with the
19 FBI agent. But he did not disclose that in the letter
20 that he sent to me. He just said he met with the FBI
21 agent about an ongoing investigation.

22 Q Had he ever disclosed this to you before then in
23 any other way?

24 A No.

25 Q Okay. Did it show up on any of his monthly

1 reports?

2 A Absolutely not.

3 Q Okay. Now, let's move forward to the meeting with
4 him on January 28th.

5 A Okay.

6 Q And what was the purpose of that meeting exactly?

7 A The purpose of that meeting was to address the
8 violations that I knew of, which at that point was that
9 he had had contact with this fugitive, that he did not
10 disclose that on his monthly report form for
11 September 2007, that he had blatantly lied to myself
12 and my supervisor on December 11th when we spoke to him
13 at his place of employment, that he had blatantly lied
14 to myself and U.S. Probation Officer Joey Byars on
15 December 20th when we asked him again if he had had
16 contact with a felon, and to discuss with him the
17 information I had received from Miss Smith, who was the
18 apartment manager where he lived.

19 Q Okay. And was this the day that he was to be
20 administered the polygraph?

21 A No. That was not that day.

22 Q What happened in this meeting on the 28th when you
23 advised him?

24 A He came in on the 28th, and he was actually pretty
25 contrite that day. He informed me that he had been to

1 treatment on the 26th and that he finally understood
2 that truthfulness meant full disclosure, that he had
3 had an in-depth session with his treatment provider as
4 well as the group members. And he admitted that he had
5 made some mistakes about things he had done on
6 supervision, that he should have disclosed to me some
7 things that he didn't.

8 He also -- We discussed with him at length this
9 issue with the felon and fugitive. He admitted that he
10 had initiated e-mail contact with this man shortly
11 after his release and that the purpose of it was to
12 thank him for harboring him when he had left Thailand.

13 Q So he had known this man before, correct?

14 A That's correct.

15 Now, he did tell us that he didn't know the man's
16 true identity, that he knew him as Dylan Thomas and
17 that he did not know he was wanted by the FBI.

18 Q Did he say, though, what his circumstances of
19 knowing him before were and how long he had known him?

20 A He did. He said that when he had left Thailand in
21 2004 after the Thai police had begun searching for him
22 for what is the basis of the instant offense, he left
23 Thailand and he had gone to another country. I don't
24 remember what that was.

25 He said he had e-mailed this individual that he

1 knew as Dylan Thomas and asked him if he could meet
2 with him or if he could help him. And he spoke on that
3 in great detail and talked about how Mr. Thomas was
4 someone that he met through a BoyChat/Boy Lover,
5 message board and that Mr. Thomas told him that he
6 could come there but there would be certain protocols
7 that he would have to meet to do that.

8 And he basically explained it, and it sounded like
9 one of those movies where people are meeting and doing
10 spy games. He said he had to go to a park in
11 Guadalajara at four o'clock in the morning, wear
12 certain things and that someone would approach him.

13 He said this individual did approach him by the
14 name -- and told him he was Dylan Thomas. They went
15 back to where this individual was living. He said that
16 the individual while he was there -- He lived there
17 approximately 30 days. He made the comment that this
18 individual was at one time the webmaster of the BoyChat
19 message board.

20 He also indicated that he knew that this
21 individual was someone who engaged in sex with young
22 boys because there were little boys in and out of there
23 all the time. He said --

24 Q This is what Mr. Phillips told you he witnessed
25 during his stay with this man in Mexico?

1 A That's right. We asked him if he actually saw the
2 man having sexual interaction with young boys. He said
3 he didn't. We even asked him, "How do you know he's
4 having sex with those boys?" And his comment was,
5 "Well, if you live with somebody, you know what they're
6 doing."

7 So he said he finally -- After things calmed down
8 he said he decided to return to the United States. And
9 he indicated that Mr. Thomas asked him to check on his
10 outstanding warrants for him when he got back here. He
11 said that --

12 Q He asked him in 2004 to check on the outstanding
13 warrants for him?

14 A That was his comment to me and my supervisor.

15 Q All right. Now, in this meeting on the 28th I
16 believe you testified previously that Mr. Phillips had
17 said that he had only recently realized that
18 truthfulness meant full disclosure?

19 A That's correct.

20 Q During your history supervising Mr. Phillips has
21 he ever given you any indication that he did not
22 understand you when you were explaining things to him
23 or that he did not understand the conditions under
24 which he was being supervised?

25 A Absolutely not. The condition that I remember he

1 had the most questions about was third-party
2 disclosure.

3 You know, this issue of honesty -- We talked about
4 that virtually every time we talked. And that was one
5 thing -- not only with Mr. Phillips but every sex
6 offender I have. I drill into their head the
7 importance of being honest, because if they can't be
8 trusted, then from our standpoint -- Our primary duty
9 as probation officers and Officers of the Court is to
10 protect the community. And we have to be able to
11 believe that these individuals are complying with their
12 conditions.

13 That was drilled into his head virtually every
14 time we talked; so much so to the point that when I
15 began to discuss some of these issues with his
16 treatment provider in early January, his treatment
17 provider even commented about how in their treatment
18 groups sometimes it's spoken about how the federal
19 P.O., referring to me, beats on the fact that they have
20 to be honest.

21 So he never at any time indicated he didn't
22 understand what truthfulness and honesty meant.

23 Q Well, now, I believe you testified earlier that
24 you are a mental health specialist with the probation
25 office, is that correct?

1 A That's correct.

2 Q Do you have an opinion as to whether or not
3 Mr. Phillips is an intelligent man of average or
4 greater intelligence, or does he ever appear to have
5 trouble understanding things in any way?

6 A He's extremely intelligent. And he even spoke on
7 one occasion when we are talking about -- We were
8 talking one time about some short stories that he used
9 to write. And these short stories involved young
10 children who entered into relationships with adults.
11 And during the course of that conversation he also
12 indicated that he would do other stories, science
13 fiction related --

14 But it was obvious that the man had a lot of
15 intelligence and that he didn't have any trouble
16 understanding anything, not to mention he was working
17 as a paralegal.

18 Q Now, did anything -- anything else take place in
19 that meeting on January 28th?

20 A We talked about a lot of issues that day. He also
21 admitted that he had had contact with two other
22 individuals that he met through the BoyChat/Boy Lover
23 message board.

24 Q Now, had he ever disclosed that he had had contact
25 with these individuals before January 28th?

1 A He had disclosed that he had had contact with one
2 of them but he had not disclosed to me that he had met
3 that individual through BoyChat. And that is Leo
4 Phillips.

5 This is the individual that he was e-mailing from
6 Thailand that we discussed on December 11th and on
7 December 20th.

8 And he admitted that he had met Leo Phillips
9 through the BoyChat/Boy Lover message board as well as
10 another individual by the name of Richard Murphy. One
11 other --

12 Q Had Mr. --

13 A Excuse me.

14 Q I'm sorry. Go ahead.

15 A One other thing I need to mention, too -- It's
16 part of the Petition -- is that we discussed that day
17 his information about the fugitive. And he also
18 disclosed that day that he had sent -- We asked him
19 what e-mail address he had used to communicate with the
20 fugitive. And he indicated that the e-mail address was
21 through Hushmail.com.

22 We then told him that he needed to disclose all
23 e-mail addresses that he had used since his release.
24 And he disclosed five e-mail addresses, two of which
25 were through Hushmail.com.

1 And I looked Hushmail.com up on the internet, and
2 it's a Canadian-based company that specializes in
3 encrypted e-mail. And they boast that since they are a
4 Canadian company they have indicated on their website
5 that foreign law enforcement officials would have to go
6 through their Department of State in order to get
7 subpoenas in order to find information out about any of
8 that e-mail.

9 Q Had Mr. Phillips disclosed to you these other
10 e-mail addresses that he had before this?

11 A He had only disclosed one e-mail address to that
12 point and he had put that one on his monthly report
13 form, and it was Gregory A. Phillips -- I believe it
14 was AOL.com. That's the only e-mail address that he
15 had disclosed.

16 Q How many additional e-mail addresses did he
17 disclose to you that day?

18 A A total of four; one was work e-mail, so three
19 others.

20 Q And it was with these e-mail addresses that he
21 admitted having communication and contact with people
22 that he met on BoyChat/Boy Lovers?

23 A Yes, that's correct. He admitted that the e-mail
24 address that he used to contact the felon was Kyosa,
25 K-y-o-s-a, at Hushmail.com. And that is from that

1 website that -- or Hushmail is the company that
2 specializes in encrypted e-mail.

3 Q Now, when is the next time that you met with
4 Mr. Phillips?

5 A We met on the 28th -- After we got through that
6 day in the office -- and that was a long
7 conversation -- we went out to his residence. And my
8 intention was to go and have him pull up his -- on his
9 computer his Internet files and have him do that. He
10 does have a search condition.

11 He turned on his computer, went to the internet.
12 The internet security protocols are set so that they
13 would be deleted when he turned the system off.

14 The apartment was small. He did have a little
15 storage room. We looked in the storage room. There
16 was a box of files there. I asked him to open the box
17 of files and just briefly looked through some of them.

18 One of them had a -- It was a file that had a
19 letter in it and which he mailed to Thailand on
20 September 28th, 2007. And in this letter -- He had
21 sent it to a man by the name of Alex Pulver, and he was
22 asking him to provide -- or gather some information on
23 his company that he had when he was over there.

24 But in that letter he indicated that his mailing
25 address in the United States was a PO box in Athens,

1 Tennessee. And he had never disclosed on his monthly
2 report forms any mailing addresses other than his
3 residence of record, which was where he was living.

4 Q He never disclosed to you that he had been using a
5 post office box in Athens, Tennessee?

6 A He did not.

7 Q Okay. Have you been able to determine that is
8 Mr. Phillips' post office box or does it belong to an
9 associate, or do you know?

10 A We asked him about that when we found that, and he
11 said that that was a post office box of a friend of his
12 by the name of Paul Schwagger (phonetic).

13 We also addressed these violations about not
14 disclosing the e-mail. When he disclosed the other
15 e-mail addresses, we asked him why he didn't disclose
16 them. And he said that he relied on this definition
17 of -- he didn't understand that truthful meant full
18 disclosure.

19 Q So he again said that he did not realize to be
20 truthful -- that that meant full disclosure?

21 A That's correct.

22 And on that issue -- You know, when we talked on
23 that first day about him complying with his conditions
24 -- I go over that monthly report form. You know, I
25 read the conditions to them, that they have to submit a

1 complete and truthful monthly report.

2 And when I explained the monthly report forms to
3 him -- This is everybody on supervision, not just sex
4 offenders. This is everybody -- I explain to them they
5 need to make sure that's truthful and complete and that
6 if they don't fully disclose the information, they
7 could be charged with lying on the form.

8 I even made a comment to Mr. Phillips that if
9 there wasn't enough room on the form for the
10 information that he needed to put down there, he could
11 use a separate sheet if he needed to.

12 And the example I use on that with everybody is
13 where it has the space for vehicles -- Because there is
14 only two spaces there and it's not uncommon for people
15 to have two or more vehicles and then have work
16 vehicles that they drive.

17 And I said, "So if you have something here where
18 it asks for information and there's not enough room to
19 put all of it, then you can either write it somewhere
20 on the side or use a separate sheet of information."

21 Q Did he appear to understand that?

22 A He sure did.

23 Q Now, on this meeting -- or at this meeting on the
24 28th did you arrange the polygraph?

25 A I had arranged the polygraph prior to that

1 meeting. I don't remember when, but I instructed him
2 that he would be going to a polygraph on
3 February 1st and that he needed to be truthful. I
4 asked him if there was anything he needed to disclose
5 prior to the polygraph, and he said he felt like he had
6 disclosed everything.

7 Q Okay. And did he show up for his polygraph?

8 A He did.

9 Q Okay. And during the course of his -- or before
10 he took his polygraph examination was he given a
11 battery of questions?

12 A He was.

13 Q Okay. And did he answer these questions?

14 A He did.

15 Q Okay. And have you had an opportunity to review
16 his answers to these questions?

17 A Yes, I have.

18 Q And could you please tell us was there anything
19 that he answered in these polygraph questions that was
20 inconsistent with what Mr. Phillips had been telling
21 you before this?

22 A On those polygraph questions he indicated -- One
23 of questions is whether he had had any contact with
24 someone who is a convicted felon. He did admit he had
25 a contact with a fugitive.

1 He had a question that was, "Since your
2 supervision began on August 15th, 2007, have you had
3 any indirect and/or third-party contact of any type or
4 by any means with your victims?"

5 He wrote, "Yes, I have spoken with Richard and Leo
6 -- " And these are two individuals he met through the
7 BoyChat/Boy Lover website. "I have spoken with Richard
8 and Leo about Ong but never requested or suggested that
9 anyone try to make contact with him or his family."

10 And then there was another one --

11 Q Did he disclose in this question that Leo Phillips
12 might possibly be a convicted felon?

13 A Yes, he did. He was --

14 Q Did he disclose in this questionnaire that Leo
15 Phillips had -- to his knowledge was someone that
16 engaged in sexual activity with children under the age
17 of 18?

18 A He replied, "Yes".

19 Q Okay. Is that contrary to what he had told you
20 before?

21 A Yes, it is.

22 Q Okay. Was there any --

23 A He also acknowledged that he had had -- that there
24 had been at least three e-mails with the fugitive Jon
25 Schillaci on or before the end of September of 2007.

1 Q And he disclosed that himself on this
2 pre-polygraph report?

3 A He did.

4 Q Did he admit in this -- in his pre-polygraph
5 report that he had knowingly lied to you?

6 A He did.

7 Q And did he admit in this pre-polygraph report that
8 since supervision began on August 17th, 2007, that he
9 had knowingly misrepresented any information to you or
10 knowingly misled you?

11 A He replied, "Yes".

12 On February 11th I had him report to the office to
13 discuss the polygraph results, because after the exam
14 he admitted that there was a fourth person that he had
15 had e-mail contact with by the name of Lance Roberts.

16 And I discussed that with him and asked him who
17 Lance Roberts was, and he said it was somebody who he
18 asked to check on a short story that he had submitted
19 prior to when he was incarcerated.

20 And he was irritated with Mr. Roberts because
21 Mr. Roberts did not respond to him the way he wanted
22 him to.

23 MR. ATCHLEY: Your Honor, at this time may I
24 approach the witness?

25 THE COURT: You may.

1 BY MR. ATCHLEY:

2 Q Probation Officer, I'm going to hand you a
3 document. Could you identify this for the Court,
4 please.

5 A This is the polygraph report on Mr. Phillips and
6 the polygraph questions that were asked during the
7 pre-test questioning on February --

8 Q Okay. Look through all those questions carefully
9 and please tell the Court whether or not that's a true
10 and accurate copy of his responses to those questions.

11 A (Looking.) Yes, it is.

12 MR. ATCHLEY: Okay. Your Honor, at this time
13 I would move this into evidence as the Government's
14 Exhibit No. 2, please.

15 THE COURT: It will be received.

16 (Government Exhibit No. 2 was admitted.)

17 BY MR. ATCHLEY:

18 Q Okay. I believe you were discussing your meeting
19 with him on the 11th.

20 A Right. On the 11th he came in to discuss the
21 polygraph results, and he admitted one other individual
22 by the name of Lance Roberts.

23 He was still contrite that day and admitted he had
24 made a lot of mistakes, that he had misled me, that he
25 should have been more honest about what was going on.

1 Q Was it at this time you decided to request the
2 Court to violate Mr. Phillips?

3 A Yes, it was.

4 One thing, too -- We talked a lot on the
5 28th about his treatment because I had had a couple of
6 conversations with his treatment provider. I let
7 the -- Mr. Phillips has a requirement that he
8 participate in mental health treatment, sex offender
9 treatment, and one of the requirements is that he be
10 truthful in treatment. And this goes, too, to some of
11 the violations.

12 He has a supplemental sex offender monthly report
13 form that he has to submit every month, and a couple of
14 the questions on there are whether or not he has
15 committed any -- if there has been any risky behavior
16 that he needs to talk about in treatment or disclose to
17 the probation officer.

18 And he had not indicated on any of those reports
19 that he had had contact with this fugitive or that he
20 had misled Miss Smith at the apartment complex. I
21 called his treatment provider on January 9th and let
22 him know about some of these issues.

23 And I had a few conversations with him. The first
24 one was on the 9th. And the treatment provider was
25 very surprised at this. He indicated that a lot of

1 this behavior clearly was going to be a problem.

2 On January 30th I called him back after
3 Mr. Phillips came in and admitted that he had met -- or
4 he had initiated e-mail contact with at least three
5 people that he knew through the BoyChat/Boy Lover
6 message board.

7 And the treatment provider was very surprised at
8 this. And he made a comment to me that that is
9 extremely high risk behavior on his part. And I said,
10 "When you say high risk behavior, what do you mean?" I
11 said, "I interpret that as a high risk to reoffend."
12 And he said, "Yes".

13 And he indicated that for Mr. Phillips to come out
14 of prison for the offense he was convicted of and then
15 immediately get back into associations with these
16 people was clearly a violation of his treatment, that
17 it is something he should have disclosed in treatment
18 and that he did not.

19 And I advised his treatment provider that he
20 claimed that these individuals were people who could
21 provide him with support and his treatment provider
22 flatly rejected that as a lie. And he stated that,
23 "Look, the only reason why these guys associate is
24 because they like to have sex with underage boys, and
25 it's illegal behavior." And he flatly rejected that.

1 He said that this was a clear indication that he
2 had a thinking problem, and he just didn't get the fact
3 that he was on supervision.

4 MR. ATCHLEY: Your Honor, if I may approach
5 the witness?

6 THE COURT: You may.

7 BY MR. ATCHLEY:

8 Q One last thing here, Probation Officer, and then
9 we'll wrap it up.

10 I'm going to show you a document. Can you
11 identify that for the Court, please.

12 A (Looking.) This is a copy of a letter that I
13 received from Mr. Phillips' therapist, Dr. Bertin
14 Glennon, that he had sent to Mr. Phillips' attorney
15 regarding his treatment.

16 Q Okay. Sent to Mr. Phillips' attorney at her
17 request, or do you know?

18 A It's my understanding it was at her request.

19 MR. ATCHLEY: If I could, Your Honor, I would
20 like to --

21 THE WITNESS: It's addressed to her.

22 MR. ATCHLEY: -- have it received into
23 evidence, please.

24 THE COURT: It will be received.

25 (Government Exhibit No. 3 was admitted.)

1 BY MR. ATCHLEY:

2 Q Lastly -- One last thing, Probation Officer. Is
3 there anything that you know based upon your
4 supervision of Mr. Phillips and events that have taken
5 place since he's been under your supervision that you
6 think the Court would like to know or that you need to
7 bring to the Court's attention regarding his compliance
8 with supervised release and his dangerousness to the
9 community?

10 A Yes, there is one other thing.

11 On March 5th I contacted Constance Smith, who was
12 the apartment manager when he signed his lease. I
13 asked her if we, myself and my supervisor, could come
14 out and see her and ask her to review my Petition that
15 I had submitted to the Court. And I wanted her to
16 review the part that dealt with her and get her to tell
17 me if there were any mistakes in it or any fallacies.

18 We went out there, and she said -- She read the
19 Petition. She indicated she didn't have a problem with
20 it. She even signed it indicating she believed the
21 statements were very accurate.

22 She also told us that she had had a conversation
23 with a man at the apartment complex named Randy Heaton
24 (phonetic) back shortly after we met with her on
25 January 4th.

1 MS. McFADDEN: Your Honor, I'm going to
2 object to this. I know that the rules of hearsay and
3 the rules of evidence don't apply in this. This is
4 something that Mr. Atchley provided to me today, a
5 documentation on this interview.

6 We're getting into quadruple hearsay. Again
7 I know the rules don't apply, but this is information
8 that is new to me as of today. And I'm not trying to
9 blindsides Mr. Atchley. I did get it today.

10 But so I would object on the grounds that,
11 one, I'm not prepared to either refute it or
12 investigate it; two, we're getting into triple,
13 quadruple hearsay.

14 Again I know the rules don't apply, but in
15 the interest of fairness, the ability to be able to
16 either investigate the person making it or look into
17 the allegations, it's unfair to Mr. Phillips to have
18 that admitted today.

19 THE COURT: Mr. Atchley.

20 MR. ATCHLEY: Yes, sir.

21 On the second issue, the evidentiary issue,
22 actually the agent is prepared to testify not about
23 what he was told somebody told this person. He
24 actually went out and interviewed this person, so he's
25 prepared to tell exactly what was told to him, which is

1 clearly admissible in these types of hearings.

2 Firstly, with regard to the notice, she's
3 absolutely correct. I provided this to her today when
4 it came to my attention. It is not part of the
5 Petition. It came up after the Petition was drafted.
6 I do, however, think that he has been notified of this
7 in writing. He's aware of this.

8 I would have no objection if she wanted to
9 have a moment to review through it and look at it with
10 the Court's permission.

11 It is not one of the enumerated bases for his
12 violation. However, I think it is certainly something
13 that is relevant to the Court to consider in this
14 hearing.

15 And if the Court chooses not to hear it in
16 the guilt phase today, I think it clearly would be
17 admissible for the Court to hear later on in a
18 punishment phase, should the Court find that
19 Mr. Phillips has, in fact, violated his supervised
20 release.

21 THE COURT: Miss McFadden.

22 MS. McFADDEN: Your Honor, quite frankly, we
23 don't think it's relevant since it's not one of the
24 violations.

25 Second of all, maybe -- I have no reason to

1 know one way or the other whether this person has a
2 criminal record, whether this person has a motive to
3 lie. I have no idea.

4 And with it being given to me today -- It was
5 done approximately three weeks ago. Mr. Chavers could
6 have provided it the U.S. attorney and to myself much
7 earlier than this so I would have had the opportunity
8 to prepare and discuss it. I might not -- I might have
9 subpoenaed that person to be here so I could
10 cross-examine him about the statements.

11 I do not blame Mr. Atchley, but I was
12 blindsided by this today. Your Honor, I don't think
13 it's fair for Mr. Phillips to have it admitted under
14 any circumstances. It's not relevant to the Petition
15 and without an opportunity to fully locate and
16 cross-examine this person -- I don't think it's
17 relevant to anything. I don't think the Court should
18 be considering that just in the matter of justice and
19 fairness.

20 THE COURT: Okay. Counsel, let's take a
21 brief recess.

22 And, Mr. Atchley, and, Miss McFadden, why
23 don't you discuss this. And, quite frankly, if you
24 want to amend your Petition to include this as a
25 charge, I think that it is only fair to give

1 Miss McFadden some time to review it and to be prepared
2 to rebut it -- or we can go forward today. However, if
3 we do forward today, I think that it should not be
4 considered as part of the hearing to determine if the
5 defendant has violated the conditions of his supervised
6 release and should only be considered in the guilt
7 phase -- the sentencing phase of the hearing.

8 At the same time, Miss McFadden, if you want
9 some additional time to prepare to rebut this charge,
10 I'll be glad to give it to you.

11 I understand that Mr. Atchley was just
12 provided this information this morning. Quite
13 obviously, he couldn't get it to you before he got it.
14 And this is a very serious matter, and I don't think we
15 should be in any hurry.

16 Let's take a ten-minute recess and then we'll
17 reconvene.

18 MS. McFADDEN: Thank you, Your Honor.

19 THE COURTROOM DEPUTY: All rise.

20 THE COURT: You may come down.

21 THE COURTROOM DEPUTY: The Court stands in
22 recess.

23 (A recess was taken.)

24 THE COURTROOM DEPUTY: All rise. This Court
25 is in session with the Honorable Thomas W. Phillips

1 presiding.

2 Please come to order and be seated.

3 THE COURT: We're missing Miss McFadden.

4 MR. ATCHLEY: I apologize. I thought she was
5 in the courtroom, and I apologize.

6 THE COURT: That's okay.

7 (Ms. McFadden entered the courtroom.)

8 MS. McFADDEN: I'm sorry, Your Honor.

9 THE COURT: That's quite all right. We
10 thought everybody was here.

11 Okay. Where are we, Miss McFadden? Do you
12 need some additional time to rebut this testimony?

13 MS. McFADDEN: No, Your Honor.

14 Based on the information from the Court that
15 the Court would not consider it for the purpose of
16 whether or not -- for guilt or innocence of whether or
17 not there was a violation and that the Court would
18 consider it for purposes of sentencing -- or might
19 consider it for purposes of sentencing, if we got that
20 far, we do not need additional time.

21 THE COURT: Very well.

22 Ready to proceed, Mr. Atchley?

23 MR. ATCHLEY: Yes, sir.

24 BY MR. ATCHLEY:

25 Q And as we were going, Probation Officer, did you

1 have an opportunity after you received this information
2 to interview Mr. Heaton, the resident of the apartment?

3 A Yes, I did.

4 Q Okay. And did he tell you exactly what had
5 happened?

6 A He indicated to myself and my supervisor that some
7 time back around Thanksgiving -- sometime in
8 November -- He said around Thanksgiving that he had an
9 experience that was extremely weird and awkward.

10 And he indicated that he had returned from the
11 grocery store with his young daughter and that she was
12 holding the door open for him as he was bringing the
13 groceries in. And he indicated that as he was coming
14 in with the groceries he noticed a man standing at the
15 top of stairs who was looking at his child.

16 And he said he noticed that as he walked into
17 the -- through the door he noticed that the man did not
18 look at him or acknowledge him but kept looking at his
19 child.

20 He said that it bothered him so much that the man
21 was not acknowledging -- or looking at the child but
22 not acknowledging him that he took notice of it. As he
23 got closer to the individual -- the Individual is
24 standing at the top of the stairs -- he said as he
25 began to walk up the stairs he expected that the

1 individual would look at him but he did not. He kept
2 looking at his child.

3 And he said that it was something that he clearly
4 noticed. He clearly thought there was something wrong
5 with the demeanor of the individual standing at the top
6 of the stairs and that the fact that he was so fixated
7 on his daughter bothered him intently, to the point
8 that he confronted the man.

9 He said he looked at the individual and asked if
10 he had a problem. He said the man immediately looked
11 down and walked down the stairs and walked out.

12 I asked Mr. Heaton why he confronted the
13 individual. And he indicated that the man was so
14 obvious and blatant in his fixation on his child -- and
15 he said that he wanted the man to know that he noticed
16 it and that he wanted the man to know that his child
17 was off limits. Now --

18 Q I'm sorry.

19 A Go ahead.

20 Q Did you ask Mr. Heaton if he could identify this
21 individual?

22 A Yes, I did. Actually before we got into the
23 details of it he had indicated that there was an
24 incident with an individual that took him by surprise.
25 We had carried a picture of Mr. Phillips, which is the

1 picture that I took of him on the day that he came to
2 the office for his initial office contact.

3 Q So it was a recent photograph?

4 A It was from 8/16/2007. I showed that to
5 Mr. Heaton, and without hesitation he said that was the
6 man.

7 Q Now, this Mr. Heaton is telling you about an
8 incident that took place at his apartment involving his
9 daughter.

10 Now, your testimony has been here -- today has
11 been that Mr. Phillips' preference is for boys.

12 A We asked him about that. We asked him how old his
13 daughter was. He said she was seven years old. And we
14 asked him if he could remember what she was wearing
15 that day, and he said that she was wearing a ball cap
16 with a T-shirt and either jeans or sweats.

17 And we told him that Mr. Phillips' preference was
18 boys. And he indicated that his girl was a tomboy and
19 that she had her hair up under that cap that day.

20 We asked him if he thought that since his girl was
21 so young there is a possibility she could be confused
22 for a boy, and he said that he thought she could given
23 that she had the ball cap on and her hair was tucked
24 under and she was dressed in a T-shirt and either jeans
25 or sweats.

1 In fact, when I told him that Mr. Phillips was
2 a -- that he preferred boys and asked him what his
3 daughter was wearing, he even made the comment to me
4 that it made sense, the way she was dressed -- if he's
5 attracted to boys, it made sense to him then why he was
6 looking at her.

7 He thought he was looking at her because she was a
8 little girl. And when I told him that he was attracted
9 to boys and asked how she dressed and how she had her
10 hair that day, he said, "Oh, I guess that makes sense
11 then why he was looking at her."

12 Q Probation officer, can you think of anything else
13 with regard to the Petition violation -- the Petition
14 requesting a violation of Mr. Phillips' supervised
15 release that you would like to bring to the attention
16 of the Court today?

17 A I believe we have basically covered it. What it
18 all boils down to simply is that when he came in on
19 August 16th, I made it extremely clear to him that he
20 was a high profile case and that he was someone that
21 needed to comply fully with the conditions. He told me
22 he understood that. I made it very clear to him that
23 he was to be accountable for himself if any concerns or
24 questions arise.

25 He told me he understood. He made it clear to me

1 that he understood the social ramifications of his
2 conviction and the fact that he was high profile and
3 that convicted sex offenders are highly watched in the
4 country.

5 I made it very clear to Mr. Phillips that if he
6 had any questions about whether or not something was a
7 violation or could be a violation, he was to contact
8 me. He indicated he understood.

9 I made it extremely clear to Mr. Phillips on
10 numerous occasions that he was to be honest and
11 truthful with me and his treatment providers and with
12 anybody that I identified as a third-party risk. He
13 said he understood.

14 For the first few months of his supervision I
15 thought he was doing pretty well. When we had that
16 contact with him on December 11th, I was suspicious,
17 but I still didn't know for sure.

18 When I received that phone call from the FBI agent
19 on December 19th, I knew then that he had been
20 blatantly lying to me since shortly after he got out.

21 When I went out and spoke to the apartment
22 manager, I knew that he had blatantly defied my
23 instructions regarding third-party disclosure. He had
24 not disclosed that on his sex offender monthly report
25 forms. He had not talked about that in treatment.

1 When he came to the office on the 28th of January
2 and disclosed that he had had contact with -- that he
3 had initiated contact, e-mail contact, since his
4 release with at least three individuals he met through
5 the BoyChat/Boy Lover message board, I knew then that
6 he had blatantly defied my instructions.

7 When he disclosed that he was using encrypted
8 e-mails and yet he didn't disclose those on his monthly
9 report form -- When we went to his apartment that day
10 and I found a letter that he had sent to Thailand with
11 different mailing addresses that he had not disclosed,
12 it was clear to me that he was -- he had returned to
13 his same pattern of behavior that got him in trouble
14 the first time and that he had done nothing but
15 blatantly deceive, manipulate and lie to me.

16 MR. ATCHLEY: I have nothing further at this
17 time.

18 THE COURT: Thank you, Mr. Atchley.

19 Cross-examination, Miss McFadden.

20 MS. McFADDEN: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. McFADDEN:

23 Q Good afternoon, Mr. Chavers.

24 A Good afternoon.

25 Q First of all, I just wanted to check on a couple

1 of things.

2 You talked about the initial third-party
3 disclosure -- the first place he lived that he hadn't
4 disclosed. I just want to make clear -- He lived there
5 before you had given him information to disclose, is
6 that correct?

7 A Yes.

8 Q So that was not a violation?

9 A No, it was not.

10 Q In fact, the third-party disclosure was an oral
11 instruction. It's not anything in writing or anything
12 he signs, correct?

13 A Well, he has condition number 13 that he is to
14 make third-party notification disclosure as directed by
15 the probation officer, so it's a Court Order.

16 Q I understand but you had not -- at that point you
17 had not ordered him to make the disclosure on the
18 15th of August or whenever he moved into the In-Town
19 Suites --

20 A Right. That first place that he lived he did not
21 disclose that to her. I made it clear to him that I
22 was not going to count that as a violation because he
23 had actually checked into that facility before he met
24 with me the first time.

25 Q And you didn't? That's not one of the violations?

1 A That's correct.

2 Q Fair enough.

3 And his employment -- You confirmed with his
4 employer that he had, in fact, disclosed everything,
5 correct?

6 A That's exactly right. In fact --

7 Q And he had disclosed, correct?

8 A That's correct.

9 Q And no question they knew exactly what his
10 probation was for?

11 A Yes.

12 Q And they had your card, correct?

13 A Yeah.

14 Q And you spoke with his employer, correct?

15 A I did speak with his employer. In fact, I had
16 him -- had his employer submit a letter to me.

17 Q Okay. So he knew he could get a job --

18 A I was very satisfied with how he disclosed
19 third-party risk to his employer.

20 Q So he got a job. He had basically no problem
21 getting a job even with his conviction?

22 A That's right. He did.

23 Q And you talked about drug screens. He passed all
24 his drug screens, correct? No violations there.

25 He did everything he was supposed to do with Sex

1 Offender Registry with the TBI. He did that regularly
2 and did it properly?

3 A He did it very well.

4 Q And pursued his job. We covered all that. He did
5 all that.

6 And to your knowledge he's had no contact with
7 minors or gone to inappropriate places, correct?

8 A That's right. I have no evidence that he has
9 acted out against a child.

10 Q Okay. You have no evidence that he's been to
11 any inappropriate websites? You have no evidence that
12 he went to BoyChat or Boy Lovers, any of these things,
13 correct?

14 A Correct.

15 Q The references you made to his friends, Tag
16 Murphy, Lance Roberts and Leo -- I'm going to get to
17 Mr. Schillaci in a few minutes. But the three people,
18 Leo Phillips, Tag Murphy -- Richard Murphy and Lance
19 Roberts, are all people he knew prior to 2004, correct?

20 A That's correct.

21 Q So there is not an indication -- You're not
22 telling the Court that he has been to inappropriate
23 websites or gotten into contact with new people --

24 A No, I'm not.

25 Q -- or made new contacts with people who are

1 inappropriate, right?

2 A No.

3 Q And when you found out about Leo Phillips, you
4 instructed Mr. Phillips -- I'm sorry -- Greg Phillips,
5 to get in touch with Leo to confirm whether or not he
6 was a felon, correct?

7 A Yes, ma'am. That was on the 20th. That was
8 before I knew how he met him.

9 Q Okay. And he did that, didn't he?

10 A Yes, he did.

11 Q And, in fact, he provided you with a copy of the
12 e-mail back from Mr. Phillips?

13 A Uh-huh.

14 Q And Mr. Phillips at least indicated to Mr. Greg
15 Phillips that he was not a felon, correct?

16 A That's correct.

17 MS. McFADDEN: Your Honor, may I approach the
18 witness?

19 THE COURT: You may.

20 BY MS. McFADDEN:

21 Q Mr. Chavers, do you recognize that document?

22 A Uh-huh, I do.

23 Q And is that a copy of the e-mail that you received
24 from Mr. Phillips?

25 A It is.

1 Q And that indicates that he followed your
2 instructions and Leo was not, in fact, a felon,
3 correct?

4 A That's right.

5 MS. McFADDEN: Okay. I ask that be moved
6 into evidence as Exhibit 1, Defendant's Exhibit 1.

7 THE COURT: It will be received.

8 (Defendant's Exhibit No. 1 was admitted.)

9 MS. McFADDEN: Thank you, Your Honor.

10 BY MS. McFADDEN:

11 Q And you have no evidence, other than Mr. Greg
12 Phillips' indications, that Leo had any other illegal
13 activity or criminal activity going on, correct? You
14 have no reason to believe on your own that Leo had any
15 criminal activity, any criminal history, any criminal
16 background?

17 A That's correct. That's correct.

18 Q And Tag Murphy -- The only thing that was
19 inappropriate for Mr. Phillips to be in touch with him
20 is because he had met him four years or three years
21 previously in a chat room?

22 A That's correct.

23 Q So you didn't have any indication --

24 A I do not.

25 Q Okay. So if it's not -- Can you point to me where

1 in any of the reports any instructions that
2 Mr. Phillips cannot have contact with people that he
3 knows from a prior life even if they're not felons or
4 not involved in criminal activity? Is there any reason
5 he can't be involved with old friends?

6 A Well, the issue around these three friends -- four
7 friends is that he's to comply with sex offender
8 treatment, and part of the requirement for his
9 treatment with the Center for Individual Family
10 Effectiveness is that he not engage in risky behavior.

11 This is one of the issues I talked about with his
12 treatment provider. You know, when I advised his
13 treatment provider -- Before I charged the violation of
14 the -- the treatment violation I called Dr. Glennon to
15 see if he agreed with whether or not this was a
16 violation of treatment. And he did not hesitate to
17 indicate that this was a violation of his treatment
18 program rules --

19 Q Okay.

20 A -- because these were individuals that he
21 associated with while he was in the process of
22 offending.

23 Q Okay. But for these purposes he's not to your
24 knowledge associated -- again leaving out
25 Mr. Schillaci -- associated with anybody that has

1 criminal activity or engaged in criminal activity or is
2 a felon, correct?

3 A Other than -- That's correct.

4 Q Okay. Now, you've alleged a number of violations
5 in here. So if you don't mind, I'm going to go through
6 these. You have a copy of your report in front of you
7 I assume.

8 A I do.

9 Q Now, your first -- the first noncompliance -- the
10 first violation number is that Mr. Phillips shall have
11 no direct or third-party contact with the victim or
12 other children under the age of 18 without prior
13 written consent, is that correct?

14 A That's correct.

15 Q The only indication that he's had any contact in
16 any conceivable shape or form is the information you
17 got from Mr. Phillips himself saying he's thought about
18 Ong and he talked to Richard, Tag or Leo, wondering how
19 he was doing, correct?

20 A Well, he answered "yes" to that question and then
21 explained, right. That's all.

22 Q He didn't ask -- To your knowledge he never asked
23 Mr. Murphy or any friends or anyone to get in touch
24 with Ong, correct?

25 A That's correct. I asked him about that after the

1 polygraph, and he denied initiating the contact.

2 Q So to your knowledge he's never had any contact
3 with Ong, direct or indirect?

4 A That's correct.

5 Q So really that's not a violation then, correct?

6 A Well, in my opinion it is.

7 Q Asking somebody how somebody else is doing is a
8 violation?

9 A Well, we talked about third-party contact at
10 length.

11 Q And how is that third-party contact?

12 A I don't know how he's going to determine how Ong
13 or his family is doing if somebody doesn't approach Ong
14 or his family. So that's my opinion of that.

15 Q Okay. But pure speculation as to how he's doing
16 would not be considered third-party contact, would it?

17 A Speculation as to how?

18 Q How Ong is doing. If I said to you, "Tim, I
19 wonder how my friend Barbie is doing. I haven't talked
20 to her for a few years." That's not third-party
21 contact, is it?

22 A No.

23 Q Violation number two. Standard condition number
24 nine, "You shall not associate with persons engaged in
25 criminal activity and shall not associate with anyone

1 convicted of a felony." We talked about that.

2 With the exception of Mr. Schillaci you have no
3 reason to believe he's had any other contacts --

4 A That's correct.

5 Q Okay. And then -- I will come back -- A lot of
6 this is obviously going to go around Mr. Schillaci, so
7 I will come back to the report and everything like
8 that.

9 Okay. You talked about one of the violations. Is
10 that the multiple e-mail addresses? Correct?

11 A That's correct.

12 Q Do you have a copy of your monthly supervision
13 report by chance, a blank one?

14 A A blank one? No, I do not. I'm pretty familiar
15 with that monthly report, though.

16 Q I know but I would like you to be able to look at
17 it so I can ask you questions.

18 MS. McFADDEN: May I approach, Your Honor?

19 THE COURT: You may.

20 BY MS. McFADDEN:

21 Q You probably know it better than I do,
22 Mr. Chavers.

23 A I don't know about that. (Looking.)

24 Q Mr. Chavers, could you please look at the monthly
25 report. And is that a true and correct copy of the

1 monthly report that you have your probationers fill
2 out?

3 A There is a few of them in existence, but we do use
4 this one.

5 Q And it's a three-page document, is that correct?

6 A It's front and back and then -- When we give them
7 to the individuals, it's front and back. So it's one
8 page on front and back. And then this is one that I
9 give to sex offenders.

10 Q And is that a copy of what you would have given
11 Mr. Phillips to fill out?

12 A Yes.

13 Q And under Part A on the first page it says,
14 "Residence." And it has the street address, secondary
15 address, mailing address and e-mail address, correct?

16 A That's correct.

17 Q Is that e-mail address or e-mail addresses?

18 A It says e-mail address.

19 Q It's one, correct?

20 A It says e-mail address. However, when I go over
21 the monthly report forms with individuals, I make it
22 clear to them that they need to put all the information
23 in there. If they don't have enough room, then they
24 can add it on somewhere on the form or use a separate
25 page.

1 Q Well -- And I understand that because you talked
2 about vehicles -- how you could list some people with
3 multiple vehicles, but it specifically says, "List all
4 vehicles owned or driven by you." It doesn't say,
5 "List all e-mail addresses that you use", does it? It
6 just says e-mail address.

7 A It says e-mail address.

8 Q Okay. Thank you.

9 And the mailing address you talked about -- you
10 found a document that had a different post office box.
11 That wasn't Mr. Phillips' mailing address, was it? It
12 was Paul Schwagger's, correct?

13 A He told me it was Paul Schwagger's.

14 Q Did you check on it?

15 A No, I didn't.

16 Q So you have no reason to --

17 A -- to believe it's not Paul Schwagger's?

18 Q Right.

19 A I'm sure it's Paul Schwagger's.

20 Q And Paul Schwagger is not a person who is either a
21 felon or engaged in criminal activity, is he?

22 A I know very little about Paul Schwagger.

23 Q Did you look into him?

24 A No, I did not.

25 Q You have no reason to believe that he is an

1 inappropriate person for Mr. Phillips to be in touch
2 with, do you?

3 A No.

4 Q And you talked about how he seems to have been
5 doing fine on supervised release. In fact, you put it
6 in a letter, correct?

7 A That's exactly right.

8 MS. McFADDEN: Your Honor, I'm sorry. I
9 would like to back up. I would have to like to have
10 the monthly report moved into evidence as Defendant's
11 Exhibit 2.

12 THE COURT: It will be received.

13 (Defendant's Exhibit No. 2 was admitted.)

14 MS. McFADDEN: Thank you, Your Honor.

15 May I approach, Your Honor?

16 THE COURT: You may.

17 BY MS. McFADDEN:

18 Q Mr. Chavers, you recognize that document, correct?

19 A Very much so.

20 Q In fact, that's a letter that you sent
21 Mr. Phillips, at least supposedly at his request,
22 indicating he was doing fine, right?

23 A That's right.

24 Q And that was on December 12th?

25 A Right.

1 Q And you sent that letter despite what you
2 testified to the Court of being suspicious and having
3 reservations about his behavior on December 11th,
4 correct?

5 A When we left out of there on December 11th, I had
6 a lot of questions. I had no evidence.

7 Q Okay. Notwithstanding that, on December 12th you
8 sent this letter, correct?

9 A Yes.

10 MS. McFADDEN: Your Honor, I would ask that
11 be moved into evidence as Defendant's Exhibit's 3.

12 THE COURT: It will be received.

13 (Defendant's Exhibit No. 3 was admitted.)

14 MS. McFADDEN: Thank you, Your Honor.

15 BY MS. McFADDEN:

16 Q Now, as to Mr. Schillaci -- This is a big reason
17 why we are here, because clearly Mr. Schillaci, as we
18 know, is a felon and was on the FBI's Most Wanted List,
19 is that correct?

20 A That is correct.

21 Q Mr. Schillaci is somebody that Mr. Phillips knew
22 prior to his conviction, correct?

23 A That's what Mr. Phillips told me.

24 Q And he knew him as Dylan Thomas, correct?

25 A That's what he told me.

1 Q Again, you have no reason other than whatever you
2 might suspect to disbelieve Mr. Phillips, correct?

3 A Yes. The only thing that made me question that
4 was the fact that he said that Mr. Thomas wanted him to
5 check on his outstanding warrants in the United States.

6 And, yeah, we even asked him, "Well, how are you
7 going to check on his warrants if you don't know what
8 his true identity is?" We asked him about that. We
9 told him we didn't believe that he didn't know who the
10 guy was.

11 Q Okay. But you have no reason to disbelieve him
12 other than what you suspect, correct?

13 A That's correct.

14 Q There is no evidence to indicate otherwise,
15 correct?

16 A No.

17 Q And did you check to see -- the information you
18 later got was that Mr. Phillips learned that Mr. Thomas
19 -- the person he knew as Mr. Thomas was, in fact, a man
20 named John Schillaci, correct?

21 A Correct.

22 Q And he indicated that he learned that from a
23 television show, America's Most Wanted?

24 A America's Most Wanted.

25 Q Did you check to see if that was true, if the show

1 aired when it did?

2 A No, I did not.

3 Q You had no reason to disbelieve Mr. Phillips, that
4 that's when he found out this person was a felon?

5 A Other than when he said the guy wanted him to
6 check on his warrants.

7 Q But presumably he could have checked to see if
8 Dylan Thomas had warrants, correct?

9 A He could have.

10 Q So again there is no reason to disbelieve that
11 Mr. Phillips did not know he was a felon until he saw
12 the show, correct?

13 Did I totally confuse you because of my use of
14 pronouns?

15 A Well, no. I mean, I understand what you're
16 saying.

17 When he said to me that he wanted -- that that man
18 wanted him to check on his warrants -- I am a probation
19 officer, you know. To me that goes beyond logical
20 reasoning.

21 Q Okay. Well, people have warrants for
22 misdemeanors, don't they?

23 A They sure do.

24 Q People have warrants for traffic offenses, don't
25 they?

1 A They do. I will readily admit that there is
2 nothing else other than that.

3 Q Okay. So just that one raised a red flag and made
4 you suspicious but you've got nothing -- no proof other
5 than your suspicions based on that?

6 A That's exactly right.

7 Q All right. So there is no reason again except for
8 that one thing for you to disbelieve Mr. Phillips'
9 statement that he didn't find out that Mr. Thomas was,
10 in fact, Jon Schillaci until the end of December 2007,
11 is that correct?

12 A That's correct.

13 Q Also the e-mail contacts that Mr. Phillips had
14 with Mr. Thomas were all prior to when he learned that
15 Mr. Thomas was actually Mr. Schillaci, correct?

16 A That's what he stated.

17 Q You have no reason to disbelieve that, though, do
18 you?

19 A No.

20 Q Okay. So at the time that Mr. Phillips had
21 contact with Mr. Thomas, who we now know as
22 Mr. Schillaci, he did not know -- as far as you know,
23 he did not know that this person that he was in contact
24 with was a felon, correct?

25 A That's correct.

1 Q And to your knowledge after he learned that
2 Mr. Thomas Schillaci was a felon he had no contact with
3 him, is that correct?

4 A That's what he stated, and I have no evidence
5 otherwise.

6 Q So if he were in touch with somebody that he had
7 no idea was a felon, no idea that he was involved in
8 criminal activity -- I mean, the only thing he knew was
9 from 2004 the guy asked him to check on some warrants.
10 It wouldn't actually be a violation of his probation to
11 be in touch with him, would it?

12 A Say that one more time.

13 Q Okay. Let me rephrase this.

14 You required him to disclose contact with people
15 who were felons or engaged in criminal activity,
16 correct -- that he knew to be involved in criminal
17 activity or knew to be felons?

18 A Right. That's a condition of supervision.

19 Q Okay.

20 A Now, for Mr. Phillips it went beyond that on
21 December 11th because when we talked to him about his
22 friend, Leo Phillips, I asked him if he had had any
23 interaction with anybody he knew to be a sex offender
24 or someone who engages in sexual activity with children
25 under 18.

1 So from December 11th it goes beyond just the
2 standard condition. Then you're involving a condition
3 that he answer my questions truthfully.

4 Q I understand. But if he did not know that the
5 person was a sex offender or the person was a felon or
6 involved in criminal activity, then it would not be a
7 violation even if the person was, correct?

8 A That's correct.

9 Q Okay.

10 A We discussed that, too.

11 Q I understand. I understand. I appreciate that.
12 I just wanted to make sure that we were straight on
13 that.

14 So at the time he was actually in touch with
15 Mr. Schillaci he wasn't violating a condition of his
16 probation or supervision, was he?

17 A If he truly did not know that he was a felon or a
18 sex offender --

19 Well, before December 11th?

20 Q That's what I'm asking. At the time that he was
21 in touch with Mr. Schillaci --

22 A That's correct.

23 Q -- he would not have been in violation of his
24 supervision?

25 A From December 11th forward not telling me about

1 Mr. Schillaci is a violation.

2 Q I understand. I understand. And I understand
3 your position on that.

4 And if he had gotten advice from a lawyer that was
5 bad advice maybe, not to tell you, would that mitigate
6 your position at all?

7 A Absolutely not.

8 Q Okay.

9 A I believe that the authority to interpret
10 conditions of supervision are delegated to the
11 probation officer by the Court and no one else.

12 And I have made it very clear to him if he had any
13 questions about whether or not he was committing a
14 violation or what he should do, he should call me.

15 Q I understand that.

16 Okay. Now, let's talk about his lack of
17 disclosure to the third party for the Department at --
18 the River Hills Manor I think it is.

19 A Yes.

20 Q So you are aware that River Hills Manor has other
21 sex offenders living there, correct?

22 A Yes, that's my understanding. He indicated that
23 was one of the reasons why he wanted to live there.

24 Q Because it was a safe distance from a school and
25 there are other people there, correct?

1 A Yes.

2 Q And did you check on that to find out if that was,
3 in fact, a correct assumption, that there were other
4 sex offenders there?

5 A No, I didn't pull that up.

6 Q But presumably he knew that when he wanted to live
7 there, that there were other sex offenders there,
8 correct?

9 A Yes. In fact, the first place he went to was
10 because they had sex offenders living there, so he
11 figured that that would not be an issue.

12 Q Okay. And the first time you talked to --
13 Miss Smith I believe is her name -- was at the
14 apartment on January 4th, 2008, correct?

15 A Yes.

16 Q In fact, you talked to Miss Byrd first, and
17 Miss Byrd had no idea about Mr. Phillips' status,
18 correct?

19 A That's correct.

20 Q And so she got Miss Smith, who was no longer the
21 apartments' assistant manager, to come down, correct?

22 A That's right.

23 Q Okay. And Miss Smith was actually living at the
24 apartment still at that point in time?

25 A She was.

1 Q And were you aware that Miss Smith was no longer
2 the assistant manager because she had drug problems?

3 A No.

4 Q So you did not know that at the time?

5 A I did not know that.

6 Q Were you aware that Miss Smith had several
7 convictions?

8 A She told me she had problems with the legal
9 system.

10 Q Okay. And did you inquire into that further to
11 see if maybe she would be less than credible or you had
12 reason to doubt her credibility?

13 A No. From my standpoint she was the apartment
14 manager, and she was the one who interviewed him, and
15 she said this was what had happened. You know, my
16 focus is on him, not her.

17 Q So you confronted her in front of the person who
18 was managing the apartments at the time, right?

19 A Yes.

20 Q And clearly she hadn't told this person that she
21 rented to a sex offender, correct?

22 A Rephrase that now.

23 Q Clearly Miss Smith had not told Miss Byrd that she
24 had rented to a sex offender?

25 A Now, Miss Byrd said that Miss Smith had not said

1 anything to her --

2 Q Okay.

3 A -- about him being a sex offender.

4 Q Right. So Miss Smith had not told Miss Byrd about
5 this?

6 A That's correct.

7 Q So you're confronting Miss Smith in front of a
8 woman --

9 Let me back up. It's all in my head. I'm sorry.

10 Miss Smith rented to a sex offender but didn't
11 tell Miss Byrd?

12 A Miss Byrd did not know that he was a sex offender.

13 Q Okay. So presumably Miss Smith didn't tell her?

14 A No. According to Miss Smith, she didn't know he
15 was a sex offender. He didn't disclose that to her.
16 He told her that he was on federal probation.

17 Q You gave her your card, correct?

18 A I gave her my card, but she made it very clear to
19 myself and my colleague, Doug Corn, that day that he
20 told her he was on federal probation for having sex
21 with an underage prostitute in Thailand. He let her
22 know he was on federal probation and that I was his
23 probation officer.

24 She said she asked him point blank, "Now, what are
25 you on probation for?" And his response was, "For

1 having sex with an underage female in Thailand."

2 Q Okay. My point is that you did all this
3 questioning in front of her apartment manager, correct?

4 A Yes.

5 Q Okay. And she was still living there, correct?

6 A Yes.

7 Q And the apartment manager presumably is the one
8 who leases or unleases apartments, correct?

9 A That's correct.

10 Q Okay. So you did all this in front of her, and
11 this was all news as to Miss Byrd?

12 A As to how serious this offense was? Oh, yeah,
13 news to both of them.

14 Q So Miss Smith claimed, correct?

15 A So she claimed.

16 Q And you went back later and got a statement from
17 her and talked to her some more to confirm her story,
18 correct?

19 A That's right.

20 Q And you did say I think that she told you she had
21 some problems with the law before?

22 A Uh-huh.

23 Q And lying to an officer, federal officer, is a
24 felony offense, isn't it?

25 A That is right.

1 Q So she really couldn't come back and tell you when
2 you were private or tell you something when you were
3 alone with her when she wasn't with her apartment
4 manager, correct?

5 A I'm not sure I understand that question.

6 Q Never mind. Strike that.

7 I just want to make sure. The first time you
8 talked to her was in front of her apartment manager?

9 A Yes.

10 Q The person who leases apartments --

11 A Yes.

12 Q -- and unleases apartments?

13 A That's correct.

14 Q Okay. Why did it matter -- Why did it matter that
15 you told her it was a boy instead of a girl? I mean,
16 the offense conviction doesn't state what the gender of
17 this victim was, does it?

18 A I told him that as a requirement for him
19 disclosing third-party risk that he was to tell them
20 what his conviction was off the J & C and then
21 truthfully answer any subsequent question that they
22 asked.

23 Now, she indicated she asked him what he was on
24 supervision for. He told her for hiring an underage
25 female prostitute in Thailand. Now, that's not what

1 he's on --

2 Q Okay. This is the story she told in front of the
3 manager?

4 A That's right.

5 Q Okay. All right. And you talked about the most
6 recent incident -- or you talked about Mr. Heaton I
7 believe is his name. You have no indication that
8 Mr. Phillips made contact with the child?

9 A No.

10 Q You have no indication that he spoke to the child
11 at all?

12 A No.

13 Q I mean, nothing? Just he looked at her?

14 A That's correct.

15 Q Okay.

16 A Of course, obviously it goes beyond looking for
17 the father to claim he confronted Mr. Phillips about
18 it.

19 Q I think that if anybody looked at my children at
20 all, I'd start getting suspicious, so, yeah, without
21 again having the opportunity to talk to him.

22 A I understand.

23 MS. McFADDEN: May I have a moment, Your
24 Honor?

25 THE COURT: You may.

1 (A discussion was held off the record.)

2 MS. McFADDEN: Your Honor, I have nothing
3 further.

4 THE COURT: Thank you, Miss McFadden.
5 Any redirect, Mr. Atchley?

6 MR. ATCHLEY: No, sir.

7 Your Honor, that's all the proof I have.

8 THE COURT: Okay. You may come down,
9 Mr. Chavers.

10 Miss McFadden, do you wish to put on any
11 evidence?

12 MS. McFADDEN: Yes, Your Honor.

13 The only thing I do wish to provide to the
14 Court -- Copies have already been provided to
15 Mr. Atchley -- is the Affidavit of Bradon Raulston who
16 is representing Mr. Phillips with respect to the
17 Schillaci incident and all the factors surrounding it.
18 Mr. Raulston lays out in his Affidavit basically the
19 timeline of what happened. And I would like to present
20 that to the Court.

21 THE COURT: Okay. That will be received.

22 MS. McFADDEN: Thank you, Your Honor.

23 I would ask it be marked as Defendant's
24 Exhibit 4 I believe. Thank you.

25 (Defendant's Exhibit No. 4 was admitted.)

1 MS. McFADDEN: I do have one other thing,
2 Your Honor. I'm sorry.

3 Your Honor, I have a letter that goes more
4 to the sentencing -- If the Court determines that
5 Mr. Phillips has actually violated, I have a letter
6 from Mr. Phillips' cousin that I would like to present
7 to the Court. Copies have already been provided to
8 Mr. Atchley.

9 If I may approach.

10 THE COURT: It will be received.

11 MS. McFADDEN: Thank you, Your Honor.

12 Defendant's Exhibit 5?

13 (Defendant's Exhibit No. 5 was admitted.)

14 MS. McFADDEN: Your Honor, the defense rests.

15 THE COURT: Thank you, Miss McFadden.

16 Do you have anything further, Mr. Atchley?

17 MR. ATCHLEY: No, sir, I do not.

18 THE COURT: Okay. Why don't we take a
19 five-minute recess while I read these documents,
20 please.

21 MR. ATCHLEY: Yes, sir.

22 THE COURTROOM DEPUTY: All rise.

23 Court stands in recess.

24 (Recess taken.)

25 THE COURTROOM DEPUTY: All rise. This Court

1 is again in session with the Honorable Thomas Phillips
2 presiding.

3 Please come to order and be seated.

4 THE COURT: After considering the evidence
5 presented by the Government and the materials presented
6 by the defendant, it is clear to the Court by a
7 preponderance of the evidence that Mr. Phillips has
8 violated the conditions of his supervised release and
9 his supervised release is hereby revoked.

10 This proceeding will now move on to an
11 appropriate sentence for the defendant in this case.

12 And, first of all, counsel, the sentence of
13 this Court shall be made pursuant to the factors set
14 forth in 18 U.S.C. Section 3553(a), treating the
15 Sentencing Commission Guidelines as advisory only.

16 The Court's conclusion as to the appropriate
17 grade violation after considering the Policy Statement
18 and Guideline provisions in this case is Grade C and
19 the defendant's criminal history category is Roman
20 numeral I.

21 Now, Miss McFadden, would you like to make
22 any comments on behalf of the defendant prior to my
23 setting his sentence in this case?

24 MS. McFADDEN: Your Honor, we would ask the
25 Court stay within the Guideline range of three to nine

1 months.

2 Clearly, the Court has determined that there
3 are violations. Those violations are all technical as
4 the Court has found. They are violations that are
5 inappropriate behavior but they're not violations that
6 warrant an extensive term in custody.

7 There is no indication that he has reoffended
8 or that he's a risk to anybody in the community. So we
9 ask the Court stay within three to nine months, Your
10 Honor.

11 Your Honor, we would also ask the Court
12 consider even though it is a violation he did provide
13 information to the FBI on one of the top ten offenders
14 and they have used that information to try to find this
15 offender. And he did give that information even
16 without a promise of any kind of leniency or any kind
17 of reduction in his sentence.

18 THE COURT: In an attempt to broker a deal,
19 Miss McFadden.

20 MS. McFADDEN: Originally, yes, Your Honor,
21 but it ended up being given even without it.

22 As the Court saw the Affidavit of
23 Mr. Raulston, that information came out even under the
24 circumstances that he wasn't going to get the kind of
25 deal that he wanted.

1 THE COURT: Thank you, Miss McFadden.

2 Mr. Phillips, anything you would like to say
3 to me before I set your sentence in the case?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Thank you, Mr. Phillips.

6 Mr. Atchley, comments on behalf of the
7 Government?

8 MR. ATCHLEY: Yes, Your Honor. I'll be very
9 brief. I know you have a full report from the
10 probation office on this case and have had a full day
11 of listening to the testimony.

12 I would just point out to the Court that
13 while these are technical violations, when you look at
14 them individually, they may not at first glance look to
15 be that serious, but when you look at this entire body
16 of all this activity that has taken place really since
17 Mr. Phillips has been under supervision it's clear that
18 he's engaged in a pattern here of manipulation.

19 He's a very intelligent man. I have no
20 reason to believe he's anything but a very intelligent
21 man. And he's a manipulator. He likes to manipulate
22 the system. He likes to manipulate his probation
23 officer.

24 And the purpose behind that is he wants
25 ultimately to be able to go to a place where he can

1 engage in sex with boys and wants to live in a place
2 where he can engage in sex with boys.

3 And it is the belief of the United States
4 that he established contact with his friend, who we
5 have now learned is a top ten FBI fugitive, for the
6 purpose of trying to broker a release from his
7 supervised release. I have no doubt in my mind that he
8 orchestrated that.

9 I also have no doubt in my mind, based upon
10 the evidence that is before this Court, that he knew
11 exactly who he was dealing with and exactly what type
12 of person it was.

13 Remember, this is a man that he admitted
14 himself that he had lived with in 2004 after he had
15 fled Thailand in fear of prosecution by the Thai
16 authorities for 30 days and during that period of time
17 had witnessed him as being an individual that was
18 engaging in sex with children. He knows exactly what
19 he's doing. He knows exactly who he's dealing with.
20 He knows exactly what his ultimate goal is.

21 And this is a man that we feel like clearly
22 needs to be punished. And we think that a lengthy term
23 of imprisonment followed by return to supervised
24 release is appropriate in this case.

25 And I think that the Court needs to very

1 seriously consider modifying the term of supervised
2 release after he is out to include some more specific
3 restrictions, such as no computer access, no Internet
4 access, because I think it's become quite clear that's
5 how he is communicating with these people on these chat
6 rooms and these forums. That's how he continues to
7 communicate with individuals who he knows engage in
8 sex -- he admits himself engage in sex with children,
9 which is clearly contrary to any sort of rehabilitative
10 treatment that the Government wants to offer
11 Mr. Phillips.

12 Clearly, there is no doubt in my mind that as
13 Mr. Phillips sits here today he's an extremely
14 dangerous man.

15 THE COURT: Mr. Atchley, what is your
16 recommendation as to an appropriate sentence?

17 MR. ATCHLEY: Your Honor, we feel like a
18 sentence of at least 30 months would be appropriate in
19 this case.

20 THE COURT: Thank you, Mr. Atchley.

21 Anything further, Miss McFadden?

22 MS. McFADDEN: No, Your Honor.

23 THE COURT: Mr. Phillips, it's clear to the
24 Court that you're not going to abide by the conditions
25 of any supervised release that I would put down.

1 And I think that you are a highly intelligent
2 individual. Unfortunately, you use that intelligence
3 to try to manipulate the system, to try to manipulate
4 people, and it's all to your ultimate ruin.

5 I think that you knew full well who Mr. Jon
6 Schillaci was before you attempted to broker a deal
7 with the FBI, which is a violation of at least the
8 spirit of the conditions that I set for your supervised
9 release.

10 You totally ignored the requirements of the
11 Court in being truthful with your probation officer.

12 And, quite frankly, I am just amazed that you
13 haven't violated more conditions than you have, simply
14 because you appear to feel as though you can do
15 whatever you please, and it doesn't really make any
16 difference what this Court sets for your conditions of
17 release.

18 Therefore, I'm going to state the sentence --

19 You may sit down.

20 I'm going to state the sentence, but I'll
21 give you an opportunity to state any objection that you
22 have to the sentence before it's actually imposed in
23 this case.

24 The Court finds that the defendant has
25 committed violations of his conditions of supervised

1 release. Therefore, the Court revokes the defendant's
2 supervised release.

3 The Court has considered the nature and
4 circumstances of the offense, the history and
5 characteristics of the defendant and policy statements,
6 as well as the other factors listed in 18 U.S.C.
7 Section 3553(a), including the recommended sentence in
8 this case.

9 However, considering that the defendant is a
10 two-time convicted child sexual offender, who poses a
11 danger to the community -- And I underline that,
12 Mr. Phillips. I think you are a clear and present
13 danger to the community, particularly the children of
14 the community -- that the defendant has violated his
15 supervised release conditions almost immediately after
16 his release from the Bureau of Prisons' custody and
17 that he is in need of intensive sex offender treatment
18 available through the Bureau of Prisons Sex Offender
19 Treatment Program.

20 The defendant is hereby committed to the
21 custody of the Bureau of Prisons to be imprisoned for
22 30 months.

23 The Court strongly recommends that the Bureau
24 of Prisons designate the defendant to their facility in
25 Butner, North Carolina, and that he be placed in the

1 Sex Offender Treatment Program.

2 Upon release from imprisonment, the defendant
3 shall be on supervised release for a term of 20 years.

4 Within 72 hours of release from the custody
5 of the Bureau of Prisons the defendant shall report in
6 person to the probation office in the district to which
7 the defendant is released.

8 While on supervised release the defendant
9 shall not commit another federal, state or local crime,
10 shall comply with the standard conditions that have
11 been adopted by this Court in Local Rule 8310 and shall
12 not possess a controlled substance or a firearm.

13 The defendant shall not possess a firearm as
14 defined in 18 U.S.C. Section 921.

15 In addition, the defendant shall comply with
16 the following special conditions:

17 The defendant shall not own, use or possess a
18 computer or any other electronic device with Internet
19 capability without the written permission of the
20 probation officer.

21 The defendant shall not access or attempt to
22 access the Internet by any means without the approval
23 of his probation officer.

24 The defendant shall not utilize e-mail in any
25 form or by any means without the approval of his

1 probation officer.

2 The defendant shall also comply with all the
3 special conditions of supervision imposed in the
4 original Judgment dated September 28th, 2005.

5 Miss McFadden, are you aware of any reason
6 why this sentence should not be imposed as previously
7 read and stated by the Court?

8 MS. McFADDEN: Obviously, Your Honor, we
9 object to the sentence being beyond the Guideline range
10 --

11 THE COURT: Other than the fact that you
12 disagree with the sentence?

13 MS. McFADDEN: Other than the fact that I
14 disagree, no, Your Honor.

15 THE COURT: Okay. Thank you, Miss McFadden.

16 Mr. Atchley, are you aware of any reason why
17 this sentence should not be imposed as previously read
18 and stated by the Court?

19 MR. ATCHLEY: No, sir.

20 THE COURT: Mr. Phillips, the Court finds
21 that under the circumstances of this case, considering
22 all of the violations, the number of violations that
23 exist in this case, and considering the fact that I
24 find you to be a clear and present danger to children,
25 underage children, in the community, I find that the

1 sentence imposed by this Court is sufficient but not
2 greater than necessary to carry out the purposes of 18
3 U.S.C. Section 3553(a).

4 Now, Mr. Phillips, you have a statutory right
5 to appeal your sentence under certain circumstances,
6 particularly if you think the sentence is contrary to
7 law.

8 You also have the right to apply for leave to
9 appeal on what is called In Forma Pauperis; that is,
10 without paying any Court costs prior to actually filing
11 your appeal.

12 If you request, the Clerk of this Court can
13 prepare and file a Notice of appeal on your behalf.

14 In addition, Mr. Phillips, with very few
15 exceptions, any Notice of Appeal must be filed within
16 10 days of the entry of the Judgment in this case.

17 The Judgment shall be promptly prepared with
18 the forms prescribed in Judgments, including sentences
19 under the Sentencing Reform Act.

20 This Court is adjourned.

21 THE COURTROOM DEPUTY: All rise. Court
22 stands adjourned.

23 (End of Proceedings.)
24
25

REPORTER'S CERTIFICATE

STATE OF TENNESSEE)

COUNTY OF KNOX)

I, Lynda L. Clark, Court Reporter and Notary
Public, in and for the County of Knox, State of
Tennessee at large, do hereby certify:

That I reported stenographically the proceedings
held in open court on March 28, 2008, IN THE MATTER OF
UNITED STATES OF AMERICA VS. GREGORY ALEC PHILLIPS;
that said proceedings in connection with the hearing
were reduced to typewritten form; and that the
foregoing transcript is a true and accurate record of
said proceedings to the best of my knowledge, skills
and ability.

I further certify that I am not kin to any of
the parties involved therein, nor their counsel, and I
have no financial or otherwise interest in the outcome
of these proceedings whatsoever.

This the 5th day of March, 2008.

COURT REPORTER & NOTARY PUBLIC

My Commission Expires: 08/24/11.